



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 07474-99

31 July 2000

LCDR [REDACTED] USNR
[REDACTED]

Dear Command [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 2 March, 6 April and 5 May 2000, copies of which are attached. The Board also considered your letters dated 8 December 1999 with enclosure and 9 June 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinions dated 2 March and 5 May 2000. Contrary to the advisory opinion dated 6 April 2000, the supporting statements did not persuade the Board that the contested fitness report was in reprisal. They were unable to find you were never counseled that your performance was declining. In this regard, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. The Board found that the reporting senior's failure to mention your receipt of the Navy Commendation Medal did not invalidate the contested fitness report. Finally, they did not find your receipt of this medal inconsistent with the evaluation at issue which, while less favorable than your prior reports from the same reporting senior, was entirely positive in content. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



7474-99

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
2 March 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LCDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 1 October 1998 to 6 July 1999, and replace it with an unprejudiced, unbiased report that accurately reflects his fitness for duty, accomplishments, and personal awards received during the reporting period.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he desired to make a statement. The member's statement and endorsement have been received by (PERS-311), and is suitable for filing and we are in the process of having it placed in the member's digitized record.

b. Lieutenant Commander Wilson alleges the fitness report was issued in retaliation and retribution by the reporting senior for cooperation in several command investigations. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action, or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide evidence to support the claim.

c. The fitness report appears to be procedurally correct. The contents and grades assigned on a fitness report are at the discretion of the reporting senior. The evaluation of a subordinate's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. Only the reporting senior who signed the original report may substitute revised reports for file in the member's record or per reference (a), Annex B, paragraph B-9.



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1610
PERS-61/055
6 Apr 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENT AND RECOMMENDATIONS IN CASE OF
LCDR [REDACTED] USNR, [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 7 MAR 00
(b) OPNAVINST 5354.1D Navy EO Manual

1. Reference (a) requested an advisory opinion in response to LCDR [REDACTED] request to remove the fitness report for the period 1 October 1998 to 6 July 1999. Enclosure (1) is returned.
2. LCDR [REDACTED] alleges that the report in question is retaliatory in nature due to the role he played in several investigations that involved his reporting senior. [REDACTED] served as the Chief Staff Officer, Naval Reserve Intelligence Command, NAS JRB Fort Worth, Texas. As such, the reporting senior considered his cooperation with the audit/inspection teams to be "disloyal".
3. LCDR [REDACTED] describes several events as well as the audits/investigations within the command that put him at odds with the reporting senior. It is evident that the fitness report in question is certainly a declining report from the previous report written by the same reporting senior.
4. LCDR [REDACTED] provides several letters to serve as supporting evidence. Although it would have been helpful to have the actual results of the audits/investigations, I found the letters from the three Captains to be very compelling and credible.
5. It is my opinion that the fitness report in question is definitely retaliatory in nature. In accordance with reference (b), I recommend the report be removed from his official record.

Subj: REQUEST FOR COMMENT AND RECOMMENDATIONS IN CASE OF
LCDR [REDACTED] USNR, [REDACTED]

6. LC [REDACTED] alleges a very serious compromise concerning the 0-4 fitness reports for several of the RIPOs. I recommend that this allegation be forwarded to PERS-9 for their action.

[REDACTED]
[REDACTED]
[REDACTED]
Director, Professional
Relationships Division
(PERS-61)



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

74741-99
5420
PERS-9
5 May 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR INFORMATION IN THE CASE OF [REDACTED]

Ref: (a) PHONCON NPC (PERS-9) [REDACTED] CNRF (N00E) CDR
Hayes of 21 April 00

Encl: (1) BUPERS memo 5420 Pers-00ZCB of 07 MAR 00

1. Enclosure (1) is returned with the following comments and recommendations:

a. I do not support LCE [REDACTED] petition. After careful review of the documentation provided, and after conferring with [REDACTED] Office of General Council CNRF staff, reference (a), I concur with PERS-3 recommendation that the record remain unchanged.

b. [REDACTED] alleges that the fitness report in question is retaliatory in nature due to the role he played in numerous investigations that involved his reporting senior, [REDACTED]. [REDACTED] so cites a long list of alleged improprieties involving staff members of the Reserve Intelligence Command (RIC) in Fort Worth, Texas.

c. To clarify the situation regarding [REDACTED] allegations, I called [REDACTED] legal council on the CNRF staff in New Orleans. [REDACTED] informed me that there had been no less than nine different investigations conducted into the allegations at the RIC in Fort Worth. In each and every case, [REDACTED] was cleared of any wrongdoing and remained in position as Deputy Reserve Intelligence Command.

d. It is the reporting senior's responsibility to report on his officers honestly and accurately, even if that means a declining fitness report. Marks and comments are at the discretion of the reporting senior. A member who disagrees with

Subj: REQUEST FOR INFORMATION IN THE CASE OF [REDACTED]

the report has the right to submit a statement. [REDACTED] has submitted a statement that is in his official record. [REDACTED]

e. The documentation provided indicated that [REDACTED] had personal differences with his reporting senior, [REDACTED]. However, [REDACTED] is cleared of any wrongdoing during several investigations and his authority as a reporting senior is without question. The fact that the report is declining in of itself does not make it retaliatory. I believe [REDACTED] judgement as a reporting senior is trustworthy and the record should stand.

2. Additional questions may be directed to [REDACTED] 3087 or commercial [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Captain, U. S. Naval Reserve
ACNPC for Naval Reserve
Personnel Management